
HOUSE BILL 2515

State of Washington

58th Legislature

2004 Regular Session

By Representatives Schual-Berke, Benson, Cody, Carrell, Darneille, Boldt, Chase and Santos

Read first time 01/15/2004. Referred to Committee on Health Care.

1 AN ACT Relating to fairness and accuracy in the distribution of
2 risk; amending RCW 18.20.125, 74.39A.050, 70.129.105, and 18.20.110;
3 adding new sections to chapter 18.20 RCW; adding a new section to
4 chapter 18.51 RCW; adding a new section to chapter 74.42 RCW; creating
5 a new section; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the inspection,
8 reinspection, and complaint investigation procedures for licensed
9 boarding homes must be strong, consistent, efficient, and fair. The
10 legislature further finds that the inspection, reinspection, and
11 complaint investigation process should facilitate open and candid
12 communication between licensors and providers and assure that
13 violations are accurate and based on verified facts so unsubstantiated
14 violations are eliminated. The legislature further finds those
15 modifications will promote compliance with regulations by providers and
16 achieve the goal of providing high quality of care to citizens residing
17 in licensed boarding homes.

1 **Sec. 2.** RCW 18.20.125 and 2003 c 231 s 5 are each amended to read
2 as follows:

3 (1) Inspections, including reinspections, complaint investigations,
4 and inspections under RCW 74.39A.050, must be outcome based and
5 responsive to resident complaints and based on a clear set of health,
6 quality of care, and safety standards that are easily understandable
7 and have been made available to facilities. This includes that when
8 conducting licensing inspections, reinspections, complaint
9 investigations, and inspections under RCW 74.39A.050, the department
10 shall interview an appropriate percentage of residents, family members,
11 and advocates in addition to interviewing appropriate staff. All
12 findings of a deficient practice contained in an inspection,
13 reinspection, or complaint investigation report shall identify the
14 specific statute or regulation violated including the relevant
15 subsection, how the facts alleged by the licensors or investigators
16 establish a violation of the cited statute or regulation, and what
17 impact or outcome, if any, the alleged violation had on resident care
18 or safety.

19 (2) During the on-site licensing inspection process, including
20 complaint and reinspections, the department personnel conducting the
21 inspection or investigation shall provide periodic reports, at least
22 daily, of potential concerns to the facility administrator or a
23 designee, and the facility administrator or designee shall be given the
24 opportunity to provide information related to these concerns for
25 consideration by the licensors. At the conclusion of the inspection or
26 investigation, the licensors shall conduct a face-to-face exit
27 conference to review all the possible concerns found during the
28 inspection including which residents were impacted. If the inspection
29 is a complaint inspection, any resident wishing to remain anonymous
30 shall not have his or her name or any identifying information
31 disclosed. The facility shall have the opportunity to submit
32 additional or supplemental information related to the concerns
33 discussed at the exit conference for consideration by the licensors.
34 If, after the exit conference, the licensors determine there are
35 additional violations not discussed at the exit conference or
36 significant changes to those violations discussed, the lead licensor
37 shall telephone the administrator or a designee and discuss the

1 additional violations or changes and the facility shall have the
2 opportunity to provide additional information to be considered by the
3 licensors.

4 (3) Prompt and specific enforcement remedies shall also be
5 implemented without delay, consistent with RCW 18.20.190, for
6 facilities found to have delivered care or failed to deliver care
7 resulting in problems that are serious, recurring, or uncorrected, or
8 that create a hazard that is causing or likely to cause death or
9 serious harm to one or more residents. These enforcement remedies may
10 also include, when appropriate, reasonable conditions on a license. In
11 the selection of remedies, the safety, health, and well-being of
12 residents shall be of paramount importance.

13 ((+3)) (4) To the extent funding is available, the licensee,
14 administrator, and their staff should be screened through background
15 checks in a uniform and timely manner to ensure that they do not have
16 a criminal history that would disqualify them from working with
17 vulnerable adults. Employees may be provisionally hired pending the
18 results of the background check if they have been given three positive
19 references.

20 ((+4)) (5) No licensee, administrator, or staff, or prospective
21 licensee, administrator, or staff, with a stipulated finding of fact,
22 conclusion of law, and agreed order, or finding of fact, conclusion of
23 law, or final order issued by a disciplining authority, a court of law,
24 or entered into the state registry finding him or her guilty of abuse,
25 neglect, exploitation, or abandonment of a minor or a vulnerable adult
26 as defined in chapter 74.34 RCW shall be employed in the care of and
27 have unsupervised access to vulnerable adults.

28 **Sec. 3.** RCW 74.39A.050 and 2000 c 121 s 10 are each amended to
29 read as follows:

30 The department's system of quality improvement for long-term care
31 services shall use the following principles, consistent with applicable
32 federal laws and regulations:

33 (1) The system shall be client-centered and promote privacy,
34 independence, dignity, choice, and a home or home-like environment for
35 consumers consistent with chapter 392, Laws of 1997.

36 (2) The goal of the system is continuous quality improvement with
37 the focus on consumer satisfaction and outcomes for consumers. Except

1 as provided in RCW 18.20.125, this includes that when conducting
2 licensing inspections, the department shall interview an appropriate
3 percentage of residents, family members, resident managers, and
4 advocates in addition to interviewing providers and staff.

5 (3) Providers should be supported in their efforts to improve
6 quality and address identified problems initially through training,
7 consultation, technical assistance, and case management.

8 (4) The emphasis should be on problem prevention both in monitoring
9 and in screening potential providers of service.

10 (5) Except as provided in RCW 18.20.125, monitoring should be
11 outcome based and responsive to consumer complaints and a clear set of
12 health, quality of care, and safety standards that are easily
13 understandable and have been made available to providers.

14 (6) Prompt and specific enforcement remedies shall also be
15 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
16 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
17 delivered care or failed to deliver care resulting in problems that are
18 serious, recurring, or uncorrected, or that create a hazard that is
19 causing or likely to cause death or serious harm to one or more
20 residents. These enforcement remedies may also include, when
21 appropriate, reasonable conditions on a contract or license. In the
22 selection of remedies, the safety, health, and well-being of residents
23 shall be of paramount importance.

24 (7) To the extent funding is available, all long-term care staff
25 directly responsible for the care, supervision, or treatment of
26 vulnerable persons should be screened through background checks in a
27 uniform and timely manner to ensure that they do not have a criminal
28 history that would disqualify them from working with vulnerable
29 persons. Whenever a state conviction record check is required by state
30 law, persons may be employed or engaged as volunteers or independent
31 contractors on a conditional basis according to law and rules adopted
32 by the department.

33 (8) No provider or staff, or prospective provider or staff, with a
34 stipulated finding of fact, conclusion of law, an agreed order, or
35 finding of fact, conclusion of law, or final order issued by a
36 disciplining authority, a court of law, or entered into a state
37 registry finding him or her guilty of abuse, neglect, exploitation, or

1 abandonment of a minor or a vulnerable adult as defined in chapter
2 74.34 RCW shall be employed in the care of and have unsupervised access
3 to vulnerable adults.

4 (9) The department shall establish, by rule, a state registry which
5 contains identifying information about personal care aides identified
6 under this chapter who have substantiated findings of abuse, neglect,
7 financial exploitation, or abandonment of a vulnerable adult as defined
8 in RCW 74.34.020. The rule must include disclosure, disposition of
9 findings, notification, findings of fact, appeal rights, and fair
10 hearing requirements. The department shall disclose, upon request,
11 substantiated findings of abuse, neglect, financial exploitation, or
12 abandonment to any person so requesting this information.

13 (10) The department shall by rule develop training requirements for
14 individual providers and home care agency providers. Effective March
15 1, 2002, individual providers and home care agency providers must
16 satisfactorily complete department-approved orientation, basic
17 training, and continuing education within the time period specified by
18 the department in rule. The department shall adopt rules by March 1,
19 2002, for the implementation of this section based on the
20 recommendations of the community long-term care training and education
21 steering committee established in RCW 74.39A.190. The department shall
22 deny payment to an individual provider or a home care provider who does
23 not complete the training requirements within the time limit specified
24 by the department by rule.

25 (11) In an effort to improve access to training and education and
26 reduce costs, especially for rural communities, the coordinated system
27 of long-term care training and education must include the use of
28 innovative types of learning strategies such as internet resources,
29 videotapes, and distance learning using satellite technology
30 coordinated through community colleges or other entities, as defined by
31 the department.

32 (12) The department shall create an approval system by March 1,
33 2002, for those seeking to conduct department-approved training. In
34 the rule-making process, the department shall adopt rules based on the
35 recommendations of the community long-term care training and education
36 steering committee established in RCW 74.39A.190.

37 (13) The department shall establish, by rule, training, background
38 checks, and other quality assurance requirements for personal aides who

1 provide in-home services funded by medicaid personal care as described
2 in RCW 74.09.520, community options program entry system waiver
3 services as described in RCW 74.39A.030, or chore services as described
4 in RCW 74.39A.110 that are equivalent to requirements for individual
5 providers.

6 (14) Under existing funds the department shall establish internally
7 a quality improvement standards committee to monitor the development of
8 standards and to suggest modifications.

9 (15) Within existing funds, the department shall design, develop,
10 and implement a long-term care training program that is flexible,
11 relevant, and qualifies towards the requirements for a nursing
12 assistant certificate as established under chapter 18.88A RCW. This
13 subsection does not require completion of the nursing assistant
14 certificate training program by providers or their staff. The long-
15 term care teaching curriculum must consist of a fundamental module, or
16 modules, and a range of other available relevant training modules that
17 provide the caregiver with appropriate options that assist in meeting
18 the resident's care needs. Some of the training modules may include,
19 but are not limited to, specific training on the special care needs of
20 persons with developmental disabilities, dementia, mental illness, and
21 the care needs of the elderly. No less than one training module must
22 be dedicated to workplace violence prevention. The nursing care
23 quality assurance commission shall work together with the department to
24 develop the curriculum modules. The nursing care quality assurance
25 commission shall direct the nursing assistant training programs to
26 accept some or all of the skills and competencies from the curriculum
27 modules towards meeting the requirements for a nursing assistant
28 certificate as defined in chapter 18.88A RCW. A process may be
29 developed to test persons completing modules from a caregiver's class
30 to verify that they have the transferable skills and competencies for
31 entry into a nursing assistant training program. The department may
32 review whether facilities can develop their own related long-term care
33 training programs. The department may develop a review process for
34 determining what previous experience and training may be used to waive
35 some or all of the mandatory training. The department of social and
36 health services and the nursing care quality assurance commission shall
37 work together to develop an implementation plan by December 12, 1998.

1 **Sec. 4.** RCW 70.129.105 and 1997 c 392 s 211 are each amended to
2 read as follows:

3 (1) No long-term care facility or nursing facility licensed under
4 chapter 18.51 RCW shall require or request residents to sign waivers of
5 potential liability for losses of personal property or injury, or to
6 sign waivers of residents' rights set forth in this chapter or in the
7 applicable licensing or certification laws.

8 (2) This section shall not be read as precluding the right of long-
9 term care facilities, or nursing homes licensed under chapter 18.51
10 RCW, from requesting residents to enter into agreements to arbitrate
11 any controversy pursuant to chapter 7.04 RCW. Resident rights include
12 the freedom to contract.

13 (3) This section shall not be read as meaning that a long-term care
14 facility, or nursing homes licensed under chapter 18.51 RCW, is
15 responsible for all loss or damage to resident property. The
16 responsibility, and therefore liability, for any such loss or damage is
17 to be determined based on a finding of negligence by the long-term care
18 facility or nursing facility. Should a long-term care facility or
19 nursing facility choose to replace lost or damaged personal property or
20 compensate a resident for such loss or damage, such an action shall not
21 be construed as an admission of liability.

22 NEW SECTION. Sec. 5. A new section is added to chapter 18.20 RCW
23 to read as follows:

24 The following shall not be admitted into evidence in civil actions
25 brought against a boarding home licensed under this chapter: Written
26 findings or notices issued by the department of social and health
27 services finding noncompliance with this chapter, chapter 70.129,
28 74.34, or 74.39A RCW, or the rules adopted thereunder, as well as the
29 fact of penalties imposed by the department for the same, except where
30 such findings, notices, or penalties involve the plaintiff in a civil
31 action.

32 NEW SECTION. Sec. 6. A new section is added to chapter 18.51 RCW
33 to read as follows:

34 The following shall not be admitted into evidence in civil actions
35 brought against a nursing home licensed under this chapter: Written
36 findings or notices issued by the department of social and health

1 services finding noncompliance with the medicaid requirements of Title
2 XIX of the social security act, this chapter, chapter 70.129, 74.34, or
3 74.39A RCW, or the rules and regulations adopted thereunder, as well as
4 the fact of penalties imposed by the department for the same, except
5 where such findings, notices, or penalties involve the plaintiff in a
6 civil action.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.42 RCW
8 to read as follows:

9 (1) To ensure the proper delivery of services and the maintenance
10 and improvement in quality of care through self-review, each medicaid-
11 certified nursing home must, and any nursing home may, maintain a
12 quality assurance committee that, at a minimum, includes:

- 13 (a) The director of nursing services;
- 14 (b) A physician designated by the facility; and
- 15 (c) Three other members from the staff of the nursing home.

16 (2) When established, the quality assurance committee shall meet at
17 least quarterly to identify issues that may adversely affect quality of
18 care and services to residents and to develop and implement plans of
19 action to correct identified quality concerns or deficiencies in the
20 quality of care provided to residents.

21 (3) To promote quality of care through self-review without the fear
22 of reprisal, and to enhance the objectivity of the review process, the
23 department shall not require, and the long-term care ombudsman program
24 shall not request, disclosure of any records or reports if:

- 25 (a) The records or reports are not maintained pursuant to statutory
26 or regulatory mandate; and
- 27 (b) The records or reports are compiled, completed, created, or
28 generated at the request of, or by, the committee.

29 (4) The department may request only information that may be
30 necessary to determine whether a medicaid-certified nursing home has a
31 quality assurance committee and that it is operating in compliance with
32 this section.

33 (5) If a nursing home refuses to release records or reports that
34 would otherwise be protected under this section, the department may
35 then request only that information that is necessary to determine
36 whether the boarding home has a quality assurance committee and to
37 determine that it is operating in compliance with this section.

1 (6) Good faith attempts by the committee to identify and correct
2 quality deficiencies shall not be used as a basis for a deficiency
3 citation or as the basis for imposing sanctions.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.20 RCW
5 to read as follows:

6 (1) To ensure the proper delivery of services and the maintenance
7 and improvement in quality of care through self-review, any boarding
8 home licensed under this chapter may maintain a quality assurance
9 committee that, at a minimum, includes:

10 (a) A licensed registered nurse under chapter 18.79 RCW;

11 (b) The administrator; and

12 (c) Three other members from the staff of the boarding home.

13 (2) When established, the quality assurance committee shall meet at
14 least quarterly to identify issues that may adversely affect quality of
15 care and services to residents and to develop and implement plans of
16 action to correct identified quality concerns or deficiencies in the
17 quality of care provided to residents.

18 (3) To promote quality of care through self-review without the fear
19 of reprisal, and to enhance the objectivity of the review process, the
20 department shall not require, and the long-term care ombudsman program
21 shall not request, disclosure of any records or reports if:

22 (a) The records or reports are not maintained pursuant to statutory
23 or regulatory mandate; and

24 (b) The records or reports are compiled, completed, created, or
25 generated at the request of, or by, the committee.

26 (4) If the boarding home refuses to release records or reports that
27 would otherwise be protected under this section, the department may
28 then request only that information that is necessary to determine
29 whether the boarding home has a quality assurance committee and to
30 determine that it is operating in compliance with this section.

31 (5) Good faith attempts by the committee to identify and correct
32 quality deficiencies shall not be used as a basis for a deficiency
33 citation or as the basis for imposing sanctions.

34 **Sec. 9.** RCW 18.20.110 and 2003 c 280 s 1 are each amended to read
35 as follows:

36 The department shall make or cause to be made, at least every

1 eighteenth months with an annual average of fifteen months, an inspection
2 and investigation of all boarding homes. However, the department may
3 delay an inspection to twenty-four months if the boarding home has had
4 three consecutive inspections with no written notice of violations and
5 has received no written notice of violations resulting from complaint
6 investigation during that same time period. The department may at
7 anytime make an unannounced inspection of a licensed home to assure
8 that the licensee is in compliance with this chapter and the rules
9 adopted under this chapter. Every inspection shall focus primarily on
10 actual or potential resident outcomes, and may include an inspection of
11 every part of the premises and an examination of all records (~~(other~~
12 ~~than financial records)~~), methods of administration, the general and
13 special dietary, and the stores and methods of supply; however, the
14 department shall not have access to financial records or to other
15 records or reports pursuant to section 7 of this act. Following such
16 an inspection or inspections, written notice of any violation of this
17 law or the rules adopted hereunder shall be given to the applicant or
18 licensee and the department. The department may prescribe by rule that
19 any licensee or applicant desiring to make specified types of
20 alterations or additions to its facilities or to construct new
21 facilities shall, before commencing such alteration, addition, or new
22 construction, submit plans and specifications therefor to the agencies
23 responsible for plan reviews for preliminary inspection and approval or
24 recommendations with respect to compliance with the rules and standards
25 herein authorized.

26 NEW SECTION. Sec. 10. A new section is added to chapter 18.20 RCW
27 to read as follows:

28 A boarding home shall have the right to appeal any deficiency or
29 violation cited by the department during an inspection or complaint
30 investigation, whether or not an enforcement remedy is imposed, to the
31 office of administrative hearings. Such an appeal shall be governed by
32 chapter 34.05 RCW and chapter 388-02 WAC.

33 NEW SECTION. Sec. 11. A new section is added to chapter 18.20 RCW
34 to read as follows:

35 If during an inspection, reinspection, or complaint investigation
36 by the department, a boarding home corrects a violation or deficiency

1 that either the boarding home or the department discovers, the licensor
2 or complaint investigator shall not cite the boarding home for the
3 violation or deficiency if the violation or deficiency:

- 4 (1) Is corrected prior to the exit conference;
- 5 (2) Is not recurring; and
- 6 (3) Did not pose a significant risk of harm or actual harm to a
7 resident.

8 For the purposes of this section, "recurring" means that the
9 violation or deficiency was cited under the same regulation or statute
10 as a deficiency against the boarding home in one of the two most recent
11 preceding inspections, reinspections, or complaint investigations.

12 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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